

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM GUNN, individually and on)	
Behalf of all others similarly situated,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 4:19-cv-03129-HEA
)	
Prospects DM, LLC, & ICOT HEARING)	
SYSTEMS LLC d/b/a, LISTENCLEAR &)	
ICOT HOLDINGS, LLC, et. al.)	
)	
Defendants.)	

ICOT HOLDINGS, LLC,)	
)	
Third-Party Plaintiff/Counter-Defendant,)	
)	
vs.)	Case No.: 4:19-cv-03129-HEA
)	
Prospects DM, INC.)	
)	
Third- Party Defendant/Counter-Claimant.)	

PLAINTIFF WILLIAM GUNN’S MOTION FOR LEAVE TO FILE SUR REPLY

Comes Now, Plaintiff William Gunn, by and through the undersigned counsel, and respectfully moves this court for leave to submit the attached Sur Reply in Response to Defendants’ Reply in Support of its Motion to Dismiss.

When a movant raises new arguments in a reply brief, courts may allow the nonmovant to file a Sur Reply. See, e.g., *Equibrand Corp. v. Reinsman Equestrian Prod., Inc.*, No. 307-CV-0536-P, 2007 WL 1461393, *1 n.2 (N.D. Tex. May 17, 2007); *Pa. Gen. Ins. Co. v. Story*, No. 3:03-CV-0330-G, 2003 WL 21435511, *1 (N.D. Tex. June 10, 2003). A Sur Reply avoids “palpable

injustice” by allowing the nonmovants a chance to respond. See Pa. Gen. Ins. Co., 2003 WL 2143551, at *1.

Defendant raises several new arguments in its reply. Most notably, it draws the attention to a new District Court Order issued on December 11, 2020. Plaintiff’s Memorandum in Opposition was due to this Court on December 8, 2020. As Defendant relies on the ruling in *Hussain*, Plaintiff must address the new ruling and its implications. Moreover, an additional Order relating to the exact issues presented here was released on December 17, 2020. See *Shen v. Tricolor California Auto Group, LLC*, No. CV 20-7419 PA, ECF Doc. 35 (C.D. Cal. Dec. 17, 2020). Again, Plaintiff was unable to provide analysis or bring these matters to the attention of the Court as they were not filed until after Plaintiff’s Memorandum was filed.

Wherefore, Plaintiff respectfully requests this Court grant its Motion for Leave to File its Proposed Sur Reply and for all such other relief this Court deem just and proper.

Dated: December 22, 2020.

Respectfully Submitted,

HALVORSEN KLOTE

By: /s/ Samantha J. Orlowski

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CERTIFICATE OF SERVICE

I, Samantha J. Orlowski certify that on the 22nd of December 2020, I sent the foregoing document via this Court's e-filing system to the following counsel of record:

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/s/ Samantha J. Orlowski